

**Request for Mediation**  
**September 2002 - August 2003**

<b>DATE REQUEST RECEIVED</b>		<b>DISPUTE ISSUE(S)</b>	<b>FILED BY</b>	<b>OUTCOME</b>
1	March 2003	Identification / Evaluation	Parents	Mediation declined by sp ed unit; file closed without resolution

**Requests for Due Process Hearings**  
**September 2002 - August 2003**

<b>DATE REQUEST RECEIVED</b>		<b>DISPUTE ISSUE</b>	<b>FILED BY</b>	<b>OUTCOME</b>
1	January 2003	Placement	Sp Ed Unit	Order of Dismissal; Agreement reached between parties
2	March 2003	Eligibility	Sp Ed Unit	Application withdrawn; parents consented to evaluation
3	April 2003	Services	P & A	Order of Dismissal; Agreement reached between parties
4	May 2003	Identification, Assessment	Parents	Order of Dismissal; student not a current ND resident

## Requests for Complaint Investigation September 2002 - August 2003

DATE OF COMPLAINT		ISSUE(S)	IDEA VIOLATION(S)
1	9-17-02	Procedural Safeguards	No
2	11-8-02	1] Services, 2] Procedural Safeguards, 3] Evaluation, 4] Services, 5] Procedural Safeguards	1] No, 2] Yes, 3] No, 4] No, 5] No
3	11-8-02	1] Services, 2] Services, 3] Services, 4] FERPA	1] Yes, 2] No, 3] Yes, 4] No
4	11-8-02	1] Services, 2] Services, 3] Services, 4] FERPA	1] Yes, 2] No, 3] Yes, 4] No
5	11-8-02	1] Services, 2] Services, 3] Services	1] No, 2] Yes, 3] Yes
6	11-8-02	1] Services, 2] Procedural Safeguards	1] Yes, 2] Yes
7	11-8-02	1] Evaluation / Identification, 2] Services	1] Yes, 2] No
8	11-8-02	Evaluation / Identification	Yes
9	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
10	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
11	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
12	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
13	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
14	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
15	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
16	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No

<b>DATE OF COMPLAINT</b>		<b>ISSUE(S)</b>	<b>IDEA VIOLATION(S)</b>
17	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
18	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
19	11-13-02	1] Services, 2] Placement, 3] Procedural Safeguard	1] No, 2] No, 3] No
20	11-15-02	1] Services, 2] Services, 3] Services	<b>1] Yes, 2] Yes, 3] Yes</b>
21	11-15-02	1] Services, 2] Services	<b>1] Yes, 2] Yes</b>
22	11-18-02	1] Eligibility, 2] Services	<b>1] Yes, 2] No</b>
23	11-18-02	1] Eligibility, 2] Services	<b>1] Yes, 2] No</b>
24	11-29-02	1] Procedural Safeguards, 2] Evaluation	1] No, 2] No
25	12-4-02	1] Services, 2] Services, 3] Services	1] No, <b>2] Yes</b> , 3] No
26	1-3-03	1] Services, 2] Services, 3] Services, 4] Services, 5] Services	1] No, 2] No, 3] No, 4] No, 5] No
27	1-3-03	1] Services, 2] Services, 3] Services, 4] Services, 5] Services	1] No, 2] No, 3] No, 4] No, 5] No
28	1-17-03	1] Services, 2] Services, 3] Procedural Safeguards	<b>1] Yes, 2] Yes, 3] Yes</b>
29	1-27-03	1] Placement, 2] Services, 3] Services	1] No, 2] No, 3] No
30	1-27-03	1] Lack of Interagency Agreement	1] No
31	2-27-03	1] Services, 2] Services	<b>1] Yes, 2] Yes</b>
32	2-27-03	1] Services, 2] Services, 3] Services, 4] Services	1] No, 2] No, 3] No, 4] No
33	3-5-03	1] Services, 2] Services	1] No, 2] No

## DPI – Special Education Complaint Management Request History

	MEDIATION	COMPLAINTS	DUE PROCESS
SEPTEMBER 2002 – AUGUST 2003	1	33	4
SEPTEMBER 2001 – AUGUST 2002	6	15	3
SEPTEMBER 2000 – AUGUST 2001	4	14	5
SEPTEMBER 1999 – AUGUST 2000	5	16	4
SEPTEMBER 1998 – AUGUST 1999	5	4	6

### REGIONAL OFFICE FOR CIVIL RIGHTS (OCR) SECTION 504 COMPLAINTS FILED FROM ND

SEPTEMBER 2002 – AUGUST 2003

K – 12                      1

POST SECONDARY                      0

**DPI – SPECIAL EDUCATION**  
**COMPLAINT SYNOPSIS**  
**SEPTEMBER 2002 – AUGUST 2003**

**Note:** These summaries are intended to provide information in a greatly reduced format. All complaints are decided on their unique facts. Readers are encouraged to consult the Department or other advisors before applying the conclusions indicated below to another fact situation.

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**1. Issue (Procedural Safeguards) & Conclusion**

The student was not denied FAPE when prior written notice was sent to the parents ten days prior to the scheduled IEP meeting. The school complied with IDEA by notifying parents of the meeting early enough to ensure an opportunity to attend, and by responding to the parents' request for rescheduling the meeting at a mutually agreed time and place. The school's failure to develop a new IEP within one year of the student's last IEP, where Student had been unilaterally placed in private school by his parents in the interim, was not an IDEA violation. The school did not deny FAPE when it failed to provide the parents with copies of their procedural safeguards prior to a scheduled IEP meeting, where the parents had received notice of procedural safeguards on previous occasions, and where the parents did eventually receive notice of procedural safeguards. There was no IDEA violation where the parents were not able to view a videotape of Student made while Student was in preschool for the purpose of providing data for an assessment by a third party. The tape was unavailable because the third party had taped over Student's footage. The tape was properly characterized as not being an educational record of Student and therefore was not subject to parental rights of access under IDEA or FERPA.

**2. Issues (Services, Procedural Safeguards, Evaluation) & Conclusion**

The school provided transition services to a high school student with a disability, although documentation of the services had to be pieced together from a patchwork of documents. The school did not comply with minimum IDEA requirements regarding the transfer of rights at age 18; documentation of discussion of transfer of rights shortly before and shortly after Student's 17<sup>th</sup> birthday was not sufficient. Complainant's allegation that the school had failed to evaluate Student for continued eligibility was based on a file review in which documentation was absent from the file. When Department staff reviewed the file during the complaint investigation, appropriate evaluation documentation was found in the file, therefore no violation was found regarding evaluation. The school complied with minimum standards for implementation of Student's IEP regarding qualifications of persons providing services. Recordkeeping shortcomings will be addressed by the school pursuant to corrective actions in another complaint. Corrective actions:

- The unit must conduct training on transfer of rights and procedural safeguards at age 18 and on staff responsibilities if a change in case management occurs.
- The school must arrange for and pay for a comprehensive vocational assessment for Student.

**3. Issues (Services, FERPA) & Conclusion**

The school was out of compliance with IDEA where Student's IEP for two school years listed nonqualified personnel as a service provider. No IDEA violation was found where the school did

not report Student's progress toward annual goals and objectives using the same measurement criteria specified in the objectives, where the state progress reporting form does not cue this content; however, the school was advised to use the objective's measurement criteria in progress reports prepared subsequent to the complaint investigation report. Goals stated in IEP's failed to meet compliance requirements because they were vague and generic. Objectives lacked required content, namely measurable criteria for performance. When a teacher disclosed a grade sheet with names of several students to the complainant, the teacher's action was contrary to IDEA. However, due to the isolated nature of the act and lack of allegation of harm to other students, the Department advised school administration to address the matter in keeping with school policy. Corrective actions:

- The unit must conduct training on the team process of making decisions on appropriate service providers and on drafting annual goals and objectives that meet the content requirements of IDEA.

#### 4. Issues (Services, FERPA) & Conclusion

The Department analyzed claims that services were not provided by qualified personnel according to state standards, as provided by IDEA. The fact that a student declines to work with assigned staff for personal reasons does not establish that the assigned services provider is not qualified. The school was out of compliance with IDEA where Student's IEP for two school years listed nonqualified personnel as a service provider. The school was advised to use the objective's measurement criteria in progress reports prepared subsequent to the complaint investigation report. The IDEA principle of individualized education programming is contravened where identical content appears in the present levels of educational performance section of consecutive IEP's, without any revision to reflect what happened or did not happen since the earlier IEP was developed. Corrective actions:

- The unit must conduct training on the team process of making decisions on appropriate service providers and on drafting annual goals and objectives that meet the content requirements of IDEA.

#### 5. Issues (Services) & Conclusion

Where the complainant disagrees with the IEP's provision for 20 minutes per week of speech/language services for Student because she believes it is insufficient, the complainant may ask the school to reconvene the IEP team to consider adjusting the amount of services. IDEA provides that an IEP may be revised between annual reviews in order to address lack of progress, the child's needs, or other matters. No IDEA violation was found where the school did not report Student's progress toward annual goals and objectives using the same measurement criteria specified in the objectives, where the state progress reporting form does not cue this content; however, the school was advised to use the objective's measurement criteria in progress reports prepared subsequent to the complaint investigation report. The school was out of compliance where the IEP called for services for which Student had not been found eligible. The school did not violate IDEA when it did not reconvene the IEP team to address Student's behavior, where Student did not display problem behaviors that impeded his own learning or the learning of others. When the parent made a written request for an evaluation for possible eligibility for services based on emotional disturbance, the school responded by initiating an evaluation process; however, the assessment plan developed in that process did not constitute an evaluation for ED eligibility, therefore the school was out of compliance. Corrective actions:

- The unit must conduct training on the requirement of a finding of eligibility before services are provided.
- The school must respond to the parent's request for evaluation for eligibility in the area of ED by prior written notice stating either intent to evaluate or refusal to evaluate.
- The school must reconvene the IEP team address the noncompliant content of the IEP regarding services.

#### 6. Issues (Services, Procedural Safeguards) & Conclusion

Two of Student's IEP's were out of compliance by listing a service provider who did not meet state standards for qualified personnel for Student's area of disability. The school's failure to prepare periodic progress reports for an entire school year was a violation. Progress reports that were prepared, but not by qualified personnel, and which were not sent to the parents were likewise out of compliance. The school failed to meet minimum compliance standards regarding the transfer of rights at age 18 where the IEP preceding Student's 17<sup>th</sup> birthday does not recite that transfer of rights was discussed with Student and where the IEP preceding Student's 18<sup>th</sup> birthday does not recite discussion of transfer of rights or procedural safeguards. Corrective actions:

- The school must reconvene the IEP team to rewrite Student's IEP to show services by qualified personnel.
- The school must revise its IEP form to incorporate state transition IEP form content on transfer of rights and procedural safeguards and must train staff on completion of that content.
- The school must arrange for and pay for a comprehensive vocational assessment for Student.
- The school must submit its periodic progress report form for Departmental approval.

#### 7. Issues (Evaluation / Identification, Services) & Conclusion

Where the parent made a written request for an evaluation in all disability areas, and where the school responded by convening the teacher assistance team, also known as "building level support team", the school was out of compliance; IDEA sets out specific options for school response to a written request for evaluation, and initiation of the BLST process is not one of the options. The Department has taken steps to revise its training materials to avoid creation of the incorrect impression that the BLST process must be followed before an evaluation for IDEA eligibility may be initiated. IDEA requires that the school respond within "a reasonable time" to a parent request for evaluation. Here, the school's response 15 weeks later was out of compliance, though the school undertook activity in the meantime in the erroneous understanding that BLST activity was a prerequisite to an IDEA evaluation. IDEA does not require services for students who have not yet been found eligible, therefore there was no violation for not providing special education and related services to Student. Corrective actions:

- The school must revise its referral and evaluation policies and procedures to ensure commencement of the special education evaluation process, bypassing or superseding the BLST process, when required by IDEA.
- The school shall submit a report measuring the effectiveness of the revised referral and evaluation process by a self-assessment process designed by the school.
- The school must respond to the parent indicating whether the school will initiate evaluation or refuse to initiate evaluation.

#### 8. Issues (Evaluation / Identification) & Conclusion

The school denied having received parent's written request for IDEA eligibility evaluation. The request was properly addressed to the school and the school was deemed to have received it. The school responded to parent's written request for IDEA eligibility evaluation by convening the teacher assistance team. BLST activity is not a necessary precursor to an IDEA evaluation. The fact that the student had been evaluated and found not eligible two years before parents written request does not alter the school's responsibility to respond to the parent either by initiating evaluation or notifying parent of refusal to evaluate. Corrective actions:

- The school must revise its referral and evaluation policies and procedures to ensure commencement of the special education evaluation process, bypassing or superseding the BLST process, when required by IDEA.
- The school shall submit a report measuring the effectiveness of the revised referral and evaluation process by a self-assessment process designed by the school.

#### 9 - 19. Issues (Services, Placement, Procedural Safeguards) & Conclusion

The essence of these complaints was a disagreement over the significance of actions by the unit board and unit staff. The complainants characterize what occurred as unilateral attempts by the unit to change placements without following IDEA procedures. The unit characterized what occurred as preliminary discussions exploring the possibility of a change in location of service delivery. The Department examined documentation of each child's individualized education program and determined that the course of events complained of did not constitute a change in the child's program. No violation was found. The complaint alleged some inaccurate statements were made in various prior written notices to parents. These inaccuracies were substantiated. The Department determined that the inaccuracies did not compromise the effectiveness of the notice to accomplish its purpose, i.e. enabling parents to prepare for attendance at and participation in a meeting regarding their child. The complaint alleged disregard by the unit of IDEA's requirement that IEP team decisions be made by consensus. The facts as developed in the complaint investigation did not support the allegation.

#### 20. Issue (Services) & Conclusion

The school violated IDEA where Student's IEP for two school years did not provide for speech/language services in an amount reasonably calculated to enable Student to receive educational benefits. There was no reasoned connection between Students's significant need for speech therapy, which was documented, and the amounts of services called for in the IEP. Where Student's IEP called for extended school year services and the school failed to implement the IEP by providing ESY services, the school violated IDEA. Corrective actions:

- The school must reconvene the IEP team to address speech services in an appropriate amount to address Student's needs. NOTE: The Department did not order any particular level of service. The IEP team retained its authority to determine Student's educational program, but was directed to exercise that authority within the parameters created by Student's documented needs.
- The IEP team must determine the appropriate amount of services needed during summer 2003 for Student to maintain learned skills and prevent loss of critical skills. The school must offer Student and his parent additional services in an amount equal to the amount determined needed for summer 2003, as compensatory education for the failure to provide services in summer 2002.



- The unit must review the current IP of each student with a disability in the school for IEP content addressing ESY to ensure the provision of ESY for summer 2003 and report its findings to the Department.

#### 21. Issues (Services) & Conclusion

Student's IEP listed as learning disabilities service provider a teacher who did not hold a credential for teaching students with learning disabilities. For a period of time, Student received services from a non-credentialed person who was not supervised by a credentialed person. No periodic progress reports were prepared for one school year. The school was out of compliance for these actions. Where the annual review of Student's IEP was held 11 weeks after the due date, the annual review was not timely. Corrective actions:

- The school must provide educational services by a qualified LD teacher beginning immediately.
- Training on IDEA requirements for periodic progress reports was ordered in a separate complaint. Fulfillment of the training corrective action for the separate complaint will suffice for this complaint as well.
- The unit must conduct training for school administrators and special education staff on IDEA requirements for annual review of the IEP and revision of the IEP between annual reviews.

#### 22. Issues (Eligibility, Services) & Conclusion

This complaint presented an interstate transfer of a student with a disability. Under IDEA, when a student moves from a school district in State A to a school district in State B, the State B school district first must ascertain whether it will adopt the most recent evaluation and IEP developed for the student by the State A school district. If the school district in State B elects not to adopt the State A school district's evaluation of a student who transfers into its jurisdiction, the school district in State B must evaluate the student without undue delay and provide proper notice to parents. Here, Student started the school year in a North Dakota school after moving from State A. The school took some preliminary steps by scheduling IEP meetings in fall 2001. The primary case manager then resigned, and the school allowed an entire calendar year to elapse before making its initial determination of whether to conduct its own re-evaluation. This was a violation of IDEA. The school was also out of compliance for allowing a lapse in case management and by failing to maintain access to records. Corrective actions:

- The school must develop policies and procedures addressing students who transfer into the district from out of state.
- In an unrelated matter, the Department ordered the school to take corrective action regarding responsibility if a change in case management occurs. That corrective action will remediate the noncompliance identified in this complaint as well.
- The school must adopt and implement a set of comprehensive policies and procedures for the management of records of students with disabilities, in compliance with IDEA requirements and with unit requirements addressing accuracy, conciseness, and respect for the privacy rights of students and parents.

#### 23. Issues (Eligibility, Services) & Conclusion

Student transferred into the North Dakota school district from State A. The school was out of compliance for allowing 16 months to elapse before making its initial election to evaluate rather than accept State A's evaluation and IEP. The potentially adverse effects of school's inactivity

were mitigated by the fact that Student did receive services from the LD teacher and the special education paraeducator even though the school had not elected to adopt the State A evaluation and IEP. However, Student and his parent were deprived of timely annual review of Student's State A IEP. They were also deprived of the benefit of revision of the IEP between annual reviews, a significant detriment in view of Student's academic struggles. The school was additionally out of compliance for not preparing periodic progress reports. The school also failed to follow procedures applicable when there is a change in case management. The allegation that the school failed to address Student's behavior problems was not supported sufficiently to merit a finding of IDEA violation. Corrective actions:

- The Department has ordered corrective action in an unrelated matter that will address the school's noncompliance regarding transfer students and regarding responsibility if a change in case management occurs.

#### 24. Issues (Procedural Safeguards, Evaluation) & Conclusion

The complainant alleged that the school was in violation of IDEA because the school did not appoint an educational surrogate parent for Student. The Department determined the school was not in violation because the provisions for appointing an educational surrogate parent did not apply. Though Student had received special education services in the past, Student had been determined no longer eligible and had ceased receiving special education services at the time of the complaint. Student was thus not a "child with a disability" as required for application of the educational surrogate parent safeguards. When the parent requested an evaluation for special education eligibility in April, the school district initially replied by email that it would not conduct the evaluation because recent testing had just been completed. However, the school reversed its position and wrote to the parent in July that an evaluation was in process. Meanwhile, Student had moved out of state and remained out of state until the end of October, when he returned to the school district. A month after Student returned, the district held an assessment planning meeting. The evaluation was subsequently completed. On these facts, the Department determined that the school had failed to provide adequate written notice of its initial refusal to evaluate as required by IDEA; however, since the school did ultimately conduct the evaluation, no corrective action was warranted.

#### 25. Issues (Services) & Conclusion

Minor errors in the IEP document such as incorrect dates do not constitute a violation of IDEA; however, the Department strongly encourages careful attention to the IEP document in the word processing phase in order to preserve the integrity of the document. Student's IEP called for 170 minutes per week with the speech language pathologist. In practice, Student worked with the speech language pathologist for 20 minutes per week and with a special education paraeducator for 30 minutes daily. The school was out of compliance with the IDEA requirement that the IEP clearly state the identity of the person(s) qualified to provide services. The parent disagreed with statements in two IEP's that Student did not display problem behaviors impeding his own learning or the learning of others. The parent submitted documentation tending to show that classroom teachers in earlier grades had expressed concerns many times about the effect of Student's behavior on his academic performance. More recent marks for conduct and effort in the classroom were mostly "satisfactory" which was consistent with the IEP team's finding of no problem behaviors. IDEA provides that the IEP team may be reconvened between annual revisions, such as when a parent disagrees after the annual review with IEP content, or if student

behavior changes. During the investigation, the parent and Student's grandmother told of Student's change for the better in his behavior and his improved self-esteem. The Department encouraged the IEP team to look closely at developing a positive behavior intervention plan, which would put all school staff in a position to reinforce positive behaviors that are incompatible with inappropriate behaviors. Corrective action:

- The school must reconvene the IEP team to rewrite the section of Student's IEP stating special education and related services; so as to provide services in compliance with state standards in clearly stated language. While reconvened, the IEP team shall consider development of a positive behavior intervention plan.

## 26. Issues (Services) & Conclusion

Student is a four-year old boy receiving early childhood special education services. His primary disability is speech/language impairment. The school did not fail to provide the least restrictive environment for the student's education where the IEP team determined that the least restrictive environment was to attend preschool in the school nearest Student's residence with speech services 1/2 days, four days per week. The IEP enumerated other options that were considered and rejected. Student's IEP provides that Student would receive a regular physical education class and that he would participate in classroom parties and school events. The school did not fail to implement the student's behavior plan where the IEP provides that time-out may not last for more than three to four minutes, but may be less. The parent alleged that the IEP called for a full four minutes of time-out, and that the school was not enforcing the full four minutes. The Department determined that any variation in the duration of time-out less than four minutes would not be a significant or substantive change in the behavior plan so as to trigger the procedural safeguards of the IDEA. The school did not fail to use a car seat when transporting the student by bus, where Student's IEP does not list a car seat as an accommodation. The IEP team may consider revising the IEP to incorporate a car seat as an accommodation. The parent's concern about the student's boredom and failure to reach goals is appropriately addressed by IEP team review of the IEP and whether the goals and objectives are reasonable and appropriate. It is premature to predicate a complaint based on an anticipated denial of extended school year services, where Student's current IEP provides that the team needs to collect further data before making the ESY determination; where the team will meet again by mid April of the current school year; and where the school has stated that it is prepared to provide ESY services this summer if the team decides they are needed.

## 27. Issue (Services) & Conclusion

The school did not fail to provide the least restrictive environment for the student's education. The IEP enumerated other options that were considered and rejected. The IEP provides that Student would receive a regular physical education class with kindergartners in addition to his preschool special education services. The current placement satisfies the requirement that placement be as close as possible to the child's home. The allegation that the school was not implementing Student's positive behavior intervention plan was not substantiated. The IEP as it is currently written provides that time-out may not last for more than three minutes, but may be less if the student calms down. Any variation in the duration of time-out less than three minutes would not be a significant or substantive change in the behavior plan so as to trigger the procedural safeguards of the IDEA. The school's alleged failure to use a car seat when transporting the student by bus has been corrected. The parent's concerns that the student is not

reaching goals and needs more assistance are appropriately addressed by the IEP team reconvening to review the IEP. The school did not fail to provide adequate ESY services where Student's IEP dated November shows that the team agrees that an extended school year is needed, and further recites, "In order to maintain skills, [Student] will take part in ESY. The team will meet again in the spring, by April 15, to discuss ESY."

## 28. Issues (Services, Procedural Safeguards) & Conclusion

Division of Juvenile Services filed a complaint alleging the Unit failed to evaluate a transfer student and develop an IEP, disciplined the student without regard to his disability and failed to provide services to the student during a suspension and pending the student's enrollment at a correctional residential facility. While nothing in IDEA compels a state to accept an IEP designed and found appropriate in another state, when a student transfers, District B must first determine that (1) the student has a disability; (2) the most recent evaluation conducted by District A meets state and federal requirements; and (3) the most recent IEP developed by District A meets federal IDEA requirements. The record showed that none of the three requirements for adopting the transfer IEP were satisfied. The school did not determine whether the student had a disability and in fact questioned the disability classification from State A. The school had no records from the transferring district, only an incomplete IEP; thus unable to determine whether the most recent evaluation and IEP met requirements. Since the school was not in a position to implement the transfer IEP, the school was obligated to evaluate and develop an IEP in a timely manner.

A school district is not required to convene an IEP meeting before it suspends a student with a disability for ten days or less for misconduct growing out of the student's disability. The student was suspended for nine days and the district predetermined that the student would not be admitted following the suspension. The school had not conducted a functional behavioral assessment and implemented a behavioral intervention plan. Nor did the school convene an IEP meeting to develop such an assessment plan. If the school was unclear about whether the behavior was related to a disability, the school should have convened a meeting to make that determination. The school disciplined the student without regard to the student's disabilities and in derogation of proper procedural safeguards in that it failed to either convene an IEP meeting to develop an assessment plan to address the behavior or review an existing behavioral intervention plan. A predetermination that a student will not be admitted to school following a disciplinary suspension cannot relieve the school of its procedural requirements. If the school had followed proper procedure, it may have been apparent that the school could not implement an effective behavioral intervention plan and thus a change of placement, possibly residential, would have been appropriate. Properly suspended or expelled students are entitled to FAPE. The school failed to provide services pending the student's enrollment at the residential facility. Corrective actions:

- Review policies and procedures under the IDEA regarding transfer IEP's and submit an analysis of the process employed in this instance and what revisions to that process should have been made to address the requirements relating to implementation of interstate transfer of students with IEP.
- Explore the identification of teachers who can obtain the appropriate credentials to provide services to ED students.

- Identify strategies to improve communication with parents and the Division of Juvenile Services to alleviate roadblocks to the process of providing special education services.
- Amend the existing IEP to include a section regarding the transition from the residential facility to the district of residence no less than 30 days prior to student's release.

#### 29. Issues (Placement, Services) & Conclusion

The unit director brought a complaint against the Division of Juvenile Services alleging DJS failed to provide an appropriate placement for Student; failed to inform the school that the student had been removed from home; failed to apprise the district of the need for a residential placement; failed to include the district of residence in the evaluation process; and failed to provide transition services, all in violation of IDEA. The Department relied on case law that relieves an agency of the obligation to hold IEP meetings and develop IEP's for newly incarcerated students with disabilities in the case of short-term stays in detention facilities. Here, the student's commitment to DJS was short term (60 days for evaluation). The record established that the school was informed that Student had been removed from the home. There was no finding by DJS that Student needed a residential placement. The evaluation ordered by the juvenile court and conducted by NDYCC was not an IEP review or revision, therefore any failure on the part of DJS to include the school in the evaluation process does not constitute a violation of the IDEA. The short-term nature of the detention at NDYCC for the purpose of evaluation relieved DJS from convening an IEP team to review or develop an IEP to address transition services.

#### 30. Issue (Lack of Interagency Agreement) & Conclusion

DPI does not have jurisdiction over the Division of Juvenile Services for its decisions related to placement of students for non-educational reasons following a juvenile court order. Because there was no dispute about responsibility for providing special education services for Student, the absence of an interagency agreement did not result in a denial of FAPE. The North Dakota Interagency Agreement between the Governor's Office, ND Department of Corrections and ND Department of Public Instruction dated November 15, 1999 is inadequate to establish an interagency agreement between the SEA and the North Dakota Division of Juvenile Services (Department of Corrections) as required by the IDEA. The adoption of an interagency agreement that now comports with the IDEA demonstrates that the SEA is currently in compliance with the IDEA.

#### 31. Issues (Services) & Conclusion

A school may not compel parents to comply with local administrative rules as a condition for payment for an independent educational evaluation. Accordingly, any failure to complete district paperwork prior to the IEE does not relieve the school from paying for an IEE that otherwise satisfies the conditions under which a parent has a right to an IEE at public expense. Prior approval is not required as a condition precedent for public funding of IEEs. When a parent asks that a school pay for an IEE, the school must "without unnecessary delay" either pay for the IEE or request a due process hearing under 34 CFR 300.507 to show that its evaluation is appropriate. If parents initiate an IEE that meets agency criteria, the results of that evaluation must be considered by the school in any decision made with respect to the provision of FAPE. The school's failure to properly consider the IEE prevented the student's educational program from addressing the true nature of his disability and resulting needs is a violation of IDEA. The

school's failure to consider the results of the IEE and student's suspected need for vision services as identified by the school's OT denied student benefit of his educational program, therefore, FAPE was denied. Corrective actions:

- The school shall either pay for the IEE or request a due process hearing under 34 CFR 300.507 to show that its evaluation was appropriate.
- The school shall reimburse the parents for vision therapy provided by parents' optometrist due to denial of FAPE.
- The school shall convene the IEP team at the earliest possible opportunity to review and discuss the IEE and address the student's vision deficits and educational need for vision services. The team shall properly consider the results of the IEE: it shall review the IEE and discuss the issues raised by the IEE; and to the extent the school disagrees with the IEE, the team shall document its reasons for rejecting the findings and recommendations.
- The school shall share the results of this report with the IEP team and shall work with the unit on strategies to improve understanding of the school's responsibilities when asked to fund an IEE or any related services prior to the beginning of the 2003-2004 school year.

### 32. Issues (Services) & Conclusion

The fact that considerable IEP content is repeated in subsequent years is not, by itself, a violation of IDEA. The IEP's presented here showed sufficient evidence of revision by the IEP team, including the parent, to establish that the IEP process was followed. There was no violation of IDEA where the school provided an appropriate individualized education program for Student in the areas of math and written language, which was documented in the IEP, implemented, and communicated by periodic progress reports. Where services have been provided and progress reported to parents, implementation has occurred. For two of the years at issue, the IEP team had determined that Student did not meet the criteria for ESY and had documented that determination in the IEP. For the third year at issue, it was premature to base a complaint made in February on failure to provide ESY, where the IEP called for revisiting the issue in late spring.

### 33. Issues (Services) & Conclusion

The school implemented Student's IEP in Student's regular education math class in February 2003, in compliance with IDEA, where the regular education math teacher was informed of applicable accommodations and modifications to occur in her classroom; Student had not been identified as having a learning disability in the area of math; Student declined some offered accommodations or modifications; the regular education math teacher reported Student's performance in her class at regular intervals. The school has asked for guidance from the Department on a school's duty to reconvene the IEP team to address lack of progress in the general curriculum. Since the purpose of special education is to enable a student with a disability to have access to the general curriculum, schools have a responsibility to monitor the performance of a student with a disability in the general curriculum. In a middle school setting, where the "core team" meets regularly for all students, this monitoring may take place informally (i.e. without IDEA procedural safeguards) on an ongoing basis. There must be some minimum threshold of "lack of progress in the general curriculum" to trigger the school's duty to reconvene the team. Whether this threshold has been met will be determined on a case-by-case basis, consistent with the individual nature of the individualized education program planning process. In general, the school's duty to reconvene the IEP team to address lack of progress in the general curriculum would be triggered by a pattern or sequence of some duration and would

involve significant milestones of progress in the general curriculum such as nine-week grades or promotion/retention determinations.

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### **What We've Learned....**

- Transfer students who come from out of state with IEP's require action by the school to meet IDEA requirements. A school must ensure that it acquires complete records from the former school and takes prompt action either to accept the former IEP or to undertake its own evaluation. Doing nothing is not an option.
- A tip for maximizing the possibility of agreement to the new IEP by all IEP team members: Try concluding the IEP meeting by asking, Is there anything in this IEP that we haven't reached consensus on? For instance, if you [any team member] don't like content XYZ, can you live with it for one grading period to give it a chance, before seeking another strategy? Is anyone walking away from this meeting dissatisfied? This approach demonstrates the school's commitment to consensus decision-making, gives additional opportunity for parent participation, and if documented in team meeting minutes, provides documentation of the school's compliance with IDEA mandates in these areas.
- Be watchful of student progress in the general curriculum. The point at which the school's duty to reconvene the IEP team to address lack of progress in the general curriculum is not written in stone. Where the school fails to act when a student presents patterns of substantial lack of progress such as failing quarter grades, it may be in violation.